

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GREGORY GENE PHILLIPS,

Plaintiff,

v.

TIM SMALLS, et al.,

Defendant.

CASE NO. 3:20-CV-5047-RJB-DWC

REPORT AND RECOMMENDATION

Noting Date: November 5, 2021

The District Court has referred this action filed under 42 U.S.C. § 1983 to United States Magistrate Judge David W. Christel. This matter is before the Court on plaintiff's failure to comply with the Court's order to update his address. Dkt. 69. For the reasons set forth below, the Court recommends this matter be dismissed without prejudice for failure to prosecute pursuant to Local Rules, W.D. Wash., LCR 41(b)(2).

BACKGROUND

On August 4, 2021, the Honorable Robert J. Bryan entered an order adopting this Court's recommendation that defendants' motion for summary judgment be granted and plaintiff's

1 claims for excessive confinement be dismissed with prejudice, but that defendants' motion be
 2 denied with respect to plaintiff's excessive force claims. Dkts. 64, 62. That order, sent to
 3 plaintiff's address of record, was returned as undeliverable on August 16, 2021. Dkt. 65. Two
 4 additional documents mailed to plaintiff's address of record since that time have also been
 5 returned. Dkts. 68, 70.

6 On August 19, 2021, the Court ordered plaintiff to update his address by October 15,
 7 2021 or face dismissal without prejudice of his remaining claim in this matter. Dkt. 69. Plaintiff
 8 has failed to comply with the Court's order.

9 DISCUSSION

10 Pursuant to Local Rule 41:

11 A party proceeding pro se shall keep the court and opposing parties advised as to
 12 his or her current mailing address . . . If mail directed to a pro se plaintiff by the
 13 clerk is returned by the Postal Service . . . and if such plaintiff fails to notify the
 14 court and opposing parties within 60 days thereafter of his or her current mailing .
 . . address, the court may dismiss the action without prejudice for failure to
 prosecute.

15 LCR 41(b)(2). "Local Rule 41(b)(2) . . . confers discretion on the court to dismiss a pro se
 16 plaintiff's action if the plaintiff fails to keep the court apprised of his correct address." *Carey v.*
 17 *King*, 856 F.2d 1439, 1440 (9th Cir. 1988). Plaintiff "bears the burden of keeping the court
 18 apprised of any changes in his mailing address." *Id.* at 1441. Further, "a defendant may move for
 19 dismissal of an action or of any claim against" the plaintiff "[f]or failure to prosecute or to
 20 comply with" the Federal Rules of Civil Procedure. Fed. R. Civ. P. 41(b).

21 Here, mail was first returned to the Court as undeliverable to the address provided by
 22 plaintiff more than 60 days ago. To date, plaintiff has not responded to the Court's order
 23 requiring that he provide an updated address. Accordingly, the Court recommends that, pursuant
 24 to LCR 41(b)(2), plaintiff's remaining claim be dismissed without prejudice for failure to

1 prosecute. In light of the recommended dismissal, the Court also recommends that defendants'
2 pending motions to re-open discovery (Dkt. 66) and to obtain jail records (Dkt 62) be denied
3 without prejudice as moot.

4 CONCLUSION

5 For the reasons discussed above, the Court recommends that this action be DISMISSED
6 without prejudice, and that defendants' pending motions (Dkts. 62, 66) be DENIED without
7 prejudice as moot.

8 The parties have **fourteen (14) days** from service of this Report and Recommendation to
9 file written objections thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see also* Fed. R. Civ.
10 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.
11 *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the above time limit, the Clerk shall set
12 this matter for consideration on **November 5, 2021**, as noted in the caption.

13 Dated this 21st day of October, 2021.

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16 David W. Christel
17 United States Magistrate Judge
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